

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. ~~100~~ 44.

D. G. WILLIAMS, PLAINTIFF IN ERROR,

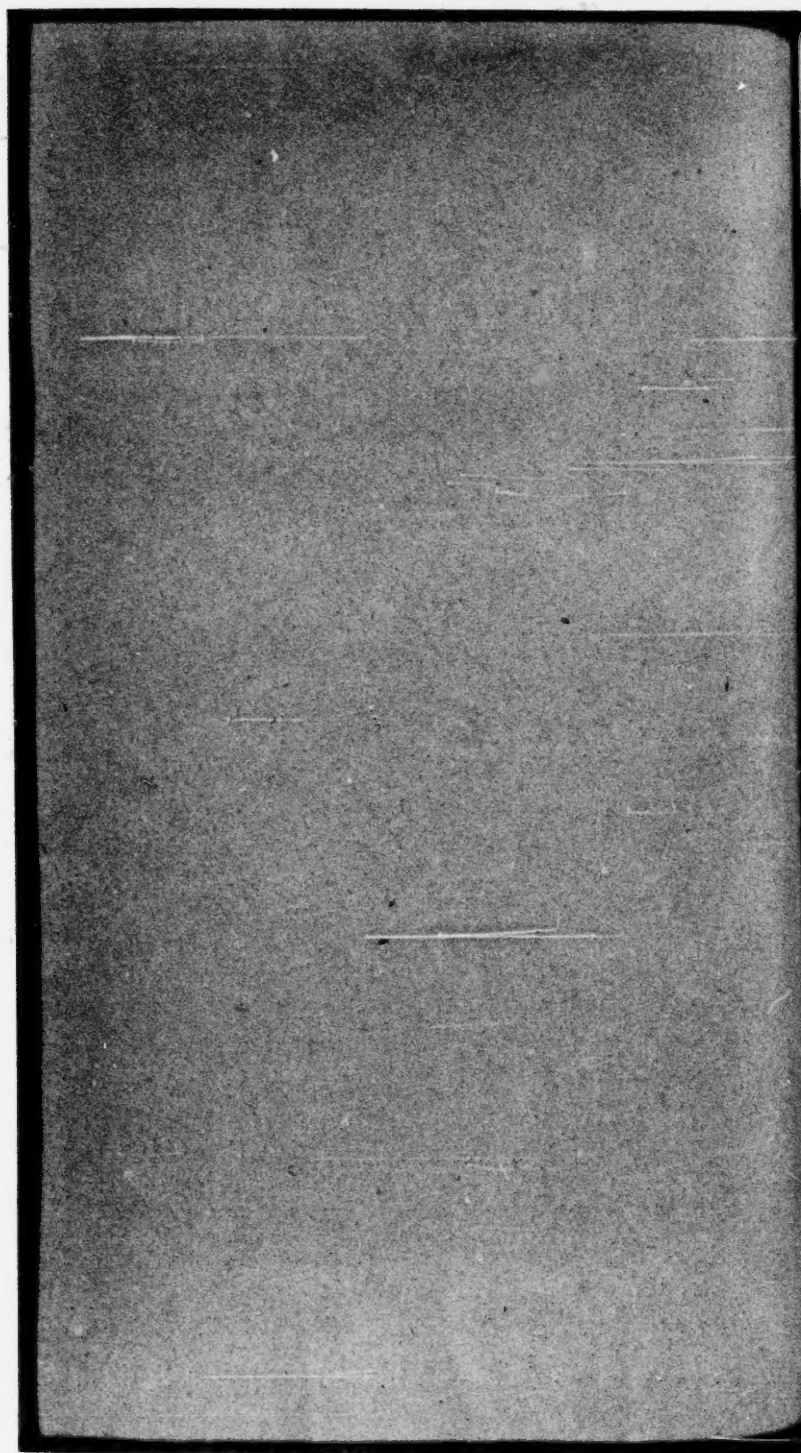
vs.

THE CITY OF TALLADEGA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED MAY 5, 1913.

(22,137)



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SUPREME COURT OF THE UNITED STATES

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No. 266.

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vs.

THE CITY OF TALLADEGA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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City Court of Talladega.

7 Div. 290.

D. G. WILLIAMS

vs.

THE CITY OF TALLADEGA.

Appeal from Talladega City Court.

Organization of Court.

STATE OF ALABAMA,

Talladega County:

Be it remembered that at a regular term of the City Court of Talladega begun and held on this the first Monday in September, 1908 (it being the 7th day of September, 1908) present and presiding the Hon. G. K. Miller, the commissioned Judge of the said City Court of Talladega, the following proceedings were had, orders made, and judgments rendered to wit:

No. 6831.

CITY OF TALLADEGA

vs.

D. G. WILLIAMS.

11TH DAY OF DECEMBER, 1908.

Charge.

Engaging in or carrying on business for which a license is required without first obtaining such license.

Judgment Entry.

On hearing the evidence it is adjudged and decreed by the Court that the defendant is guilty, and that defendant be and is fined Twenty Five Dollars, and required to pay the costs of the case; and failing to pay such fine and costs is sentenced to labor on the streets for the City for 50 days, unless such fine and costs are sooner paid. Dated this the 11th day of December, 1908.

S. C. OLIVER,
Mayor and Recorder.

Certification by City Clerk.

STATE OF ALABAMA,
Talladega County,
City of Talladega:

I, W. L. Coker, Clerk of the City Court of Talladega, do hereby
 2 certify that the above and foregoing is a true and correct
 copy of the Mayor's docket and the judgment entry thereon
 in that certain case in the Mayor's Court of the City of Talladega, wherein the City of Talladega was plaintiff and D. G. Williams was defendant; and I also further testify that the paper hereto attached marked Exhibit "A" is the warrant of arrest of the said D. G. Williams, defendant, and that the paper hereto attached marked exhibit "B" is the appeal bond of the said D. G. Williams, defendant, and his sureties, approved by the Mayor, and that said paper and proceedings are all the papers and proceedings had and done in said Mayor's Court of the City of Talladega, Alabama, in said case.

Witness my hand and seal of the City of Talladega, this the 15th day of December, 1908.

[SEAL.]

W. L. COKER,
Clerk of the City of Talladega, Alabama.

EXHIBIT "A."

STATE OF ALABAMA,
County of Talladega,
City of Talladega:

Before me, S. C. Oliver, Mayor of the City of Talladega, personally appeared Z. W. Grogan, who being by me first duly sworn, according to law, on oath doth depose and say:

That he has probable cause for believing and does believe that ordinance No. 180 of the City of Talladega is being violated, in that D. G. Williams, without first obtaining a license as is required by said ordinance No. 180, is conducting or carrying on or engaged in, a business within the corporate limits of the City of Talladega, for which business a license is required by the provisions of said ordinance,—contrary to the laws and ordinances of the City of Talladega.

Z. W. GROGAN.

Subscribed and sworn to before me on this December 11th, 1908.

S. C. OLIVER,
Mayor of the City of Talladega.

Writ of Arrest.

To any Policeman of the City of Talladega:

Complaint on oath having been made to *be* that the offense of engaging in business without a license has been committed by D. G. Williams,—you are therefore commanded forthwith to arrest the said D. G. Williams, and have him before the Mayor of the City of Talladega on this the 11th day of December, 1908, Meanwhile
3 admit him to bond in the sum of \$50.00, with sufficient sureties to be approved by you.

Given under my hand this December 11th, 1908.

S. C. OLIVER,
Mayor of the City of Talladega.

EXHIBIT "B."

STATE OF ALABAMA,
City and County of Talladega:

Know all men by these presents: That the undersigned D. G. Williams principal and J. C. Bowie sureties, are held and firmly bound unto the City of Talladega in the sum of fifty (\$50.00) Dollars, for the payment of which well and truly to be made, we bind ourselves and each of us, jointly and separately, and our, and each of our heirs, executors and administrators, firmly by these presents.

In witness whereof, we have hereunto set our hands and seals, on this the 11th day of December, 1908.

The condition of the above obligation is such that whereas, the said D. G. Williams the principal of this bond, has on this day been convicted in the Mayor's Court of said City of Talladega of the offense of engaging in or carrying on a business for which a license is required and has been fined the sum of twenty-five dollars, and besides costs; and has this day prayed and taken an appeal from said Mayor's Court to the present term of the City Court of Talladega.

Now if the said D. G. Williams shall appear at the term of the City Court of Talladega to which said appeal is taken, and from term to term thereafter, until discharged by law, and shall abide by and perform whatever sentences may be adjudged against him by said Court, then this obligation shall be void; otherwise remain of full force and effect.

D. G. WILLIAMS.	[L. s.]
J. C. BOWIE.	[L. s.]
F. B. BOWIE.	[L. s.]

Approved.

S. C. OLIVER, *Mayor.*

12/15/08.

Endorsements.

Filed in office this 18th day of December 1908. John D. McNeel.
Clerk.

3. For that, the only proper or appropriate plea in this cause is not guilty.

4. For that, the facts stated in said plea are available to defendant under the general issue.

5. For that, each and every defense that the defendant may have in this case which is attempted to be set up in said plea, can be shown under the plea of not guilty.

W. B. HARRISON,
Attorney for Plaintiff.

Endorsements.

Filed Feb. 6th, 1909. John D. McNeel, Clerk.

CITY OF TALLADEGA
vs.
D. G. WILLIAMS.

On this the 6th day of February 1909, came the parties by their Attorneys and the cause is submitted to the Court on the motion to strike defendant's plea No. 2 and it is considered, ordered, and adjudged by the Court that said motion to strike be and the same is hereby sustained and said plea No. 2 is stricken and to the action of the Court in sustaining said motion to strike the defendant then and there duly excepted. Issue being joined between the parties, the evidence being adduced, the Court holds said case for consideration and for briefs to be submitted.

And now on this the 16th day of February, 1909, comes the City of Talladega, by counsel and the defendant in person and the Court having heard and considered the evidence, it is ordered and adjudged by the Court that the defendant is guilty as charged in the complaint filed in this case and that he pay to the City of Talladega a fine of twenty-five dollars and also all the costs of this prosecution and thereupon the defendant excepts to the judgment of the Court and prays and takes an appeal to the Supreme Court of Alabama. It is thereupon considered and ordered by the Court that said appeal be and the same is hereby granted on condition that the defendant enters into a bond in the sum of Two Hundred Dollars conditioned as required by law, which said bond with J. M. Hicks and J. H. Hicks as sureties is now presented, approved and ordered filed. It is further ordered that defendant have ninety days in which to prepare and file his bill of exceptions.

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Bill of Exceptions.

In the City Court of Talladega.

CITY OF TALLADEGA

VS.

D. G. WILLIAMS.

Be it remembered, that at the — Term of the City Court of Talladega, on the trial of an action in which the City of Talladega was complainant and D. G. Williams was the defendant, on the 9th day of February, 1909, the following, among other proceedings, were had:

The complainant offered in evidence ordinance No. 180 of the City of Talladega.

Ordinance No. 180.

Be it ordained by the City Council of Talladega, that the following be and is hereby declared to be the schedule of licenses for the divers businesses, vocations, occupations and professions carried on or conducted in the City of Talladega, to-wit:

Paragraphs.

- | | |
|---|----------|
| 1. Abstract & Title company, which guarantees, warrants, or gives security for titles. Each person, firm or corporation conducting..... | \$100.00 |
| 2. Abstracts of titles. Each person, firm or corporation making (except licensed attorneys and also except those licensed under section 1.....) | 50.00 |
| 3. Advertising. Each vehicle advertising, or streets by by means of banners, floats or cartoons, or any other means provided not more than three persons are permitted, per day..... | 2.00 |
| 4. Advertising. Each person, firm or corporation advertising on streets with banners, floats, cartoons or any other means where no vehicle is used, per day.... | 1.00 |
| 5. Automobile. Each person, firm or corporation manufacturing, dealing in or taking orders for the sale of, automobiles, motor cars or vehicle of like kinds by whatsoever means propelled..... | 50.00 |
| 6. Agents or Agency. Each one not specifically mentioned herein | 25.00 |
| 7. Architects or Superintendent of Building. Each person, or where doing business as a firm, each member, doing business as..... | 50.00 |
| 8 | |
| 8. Artificial limbs. Each person firm or corporation, selling or soliciting orders for..... | 10.00 |

9.	Assignment of wages. Each person engaged in trading in, or taking, or buying, or selling and selling, or selling assignments of, or contracts for the sale or transfer or assignment of wages earned or to be earned by any person or persons employed by another. In addition to all other licenses fixed hereby	100.00
10.	Auctioneer. Each transient, per week, merchant's license not included.....	25.00
11.	Auctioneer. Each resident auctioneer, (merchant's license not included.....	50.00
12.	Audit Company. Each person, firm or corporation conducting	25.00
13.	Automobile repairer, each.....	25.00
14.	Bakery. Each person, firm or corporation conducting	25.00
15.	Barber Shop. Operating one chair, for each additional chair, per chair.....	5.00
16.	Bill poster or agent for, for distributing bills or posters, sign tacker or distributor of ordinary matter or samples, each	50.00
17.	Billiards or pool table.....	200.00
18.	Blacksmith, every <i>firm</i> , person, firm or corporation, conducting blacksmith or horse-shoeing shop.....	15.00
19.	Boarding or lodging house, conducting each where five or more boarders are taken.....	15.00
20.	Book store or dealer in books or book store supplies ledgers or stationery, where average stock amounts to less than \$1,000.00.....	10.00
21.	Book store or dealer in books or book store supplies. Where average amount of stock is \$1,000.00 or more, each person firm or corporation conducting.....	20.00
22.	Bottler of mineral or soda water, each.....	50.00
23.	Bowling alley, operating each alley.....	25.00
24.	Bricks, each dealer, manufacturer, person or agent who sells brick, operates a brick yard, solicits or takes orders therefor, to be shipped from a point in this	
9	state to another point in this state.....	25.00
	dealer in harness, or agent for the sale of the same..	25.00
25.	Buggy. Each buggy, wagon or carriage dealer or dealer n harness, or agent for the sale of the same...	25.00
26.	Buggy. Each buggy or wagon repair shop.....	10.00
27.	Building and Loan Association or real estate and loan association, each.....	100.00
27½.	Building material. Dealer in sand, lime, cement, and brick	40.00
28.	Cabinet maker, each.....	10.00
29.	Mantels. Each dealer in, where not principal stock..	10.00
30.	Mantels. Each dealer in where principal stock.....	50.00
31.	Candy manufacturer, each.....	15.00

32. Cane board, operating each cane board, knife board striking machine, telescope, lung tester, phonograph, or other device of like kind or character, per week..	5.00
Operating per annum.....	50.00
33. Carpenter shop or wood working establishment, conducting each	10.00
34. Carpet dealer. Each carpet, rug or matting dealer, where average stock is less than \$1000.....	10.00
(b) Where average stock is over \$1000.....	20.00
35. Cart. Each cart, dray or wagon operating with one horse	25.00
(b) Operating with two horses.....	30.00
36. Cigarettes. Each dealer in (additional to Tobacco & Cigar license).....	15.00
37. Circus. Each circus when admission fee for adults including charge for reserve seats or any other charge in under 35 cents:	
(a) For first performance or parade.....	50.00
(b) For each subsequent performance or parade.....	10.00
39. Circus. For each side show in connection therewith	5.00
40. Civil engineer or surveyor. Each person, firm or corporation doing business as.....	25.00
41. Clothes cleaning or pressing establishment or agency, when not connected with a tailoring establishment, conducting each	15.00
10	
42. Clothing. Each dealer in, whether principal stock or not:	
(a) When stock averages less than \$1000.....	25.00
(b) When stock averages over \$1000 and under \$2500...	50.00
(c) When stock averages over \$2500 and less than \$5000.00	75.00
(d) When stock averages over \$5000.....	100.00
43. Coal broker. Each person, firm or corporation selling coal, in car load lots, maintaining an office in Tallade-ga	25.00
44. Coal or coke dealer. (Meaning any person, firm or corporation who sells by retail: each.....	25.00
45. Cordage plant. Each person, firm or corporation, operating	50.00
46. Cotton factories. Each person, firm or corporation operating	150.00
47. Cotton seed buyer. Each person, firm or corporation buying for sale cotton seed, or as agent for any person firm or corporation.....	50.00
48. Commission Merchants. Each carrying stocks or receiving consignments of merchandise shipped from points within this state.....	50.00
49. Confectionary. Each dealer in.....	5.00
50. Contractor. Each person contracting.....	25.00

52. Contractor. Each person contracting employing 4 or more hands, or who sublets contracts.....	50.00
53. Paver. Each contracting as.....	25.00
54. Paper hanger or decorator, or Painter. Each person contracting as	25.00
55. House mover. Each person contracting as.....	25.00
56. Painter, plasterer or latherer. Each person contracting as	25.00
57. Stone worker. Each person contracting as.....	25.00
58. Cotton gins. Each cotton gin-ery.....	25.00
59. Cotton buyer or broker. (Meaning each person, firm or corporation who buys cotton, except those who buy from persons indebted to them at time of purchase,) each	50.00
60. Dentist. (See Lawyer):	
61. Dice box or device for throwing dice. Operating each	25.00
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62. Drover or dealer in Horses, Cows or other live stock, each	100.00
63. Druggist. Each druggist:	
(a) When average stock is less than \$1000.00.....	25.00
(b) When average stock is \$1000.00 but less than \$2500.00	50.00
(c) When average stock is \$2500 and less than \$5000....	75.00
(d) When average stock is \$5000 or more.....	100.00
64. Drygoods, Notions and Clothing, or either. Each dealer in, whether principal stock or not:	
(a) When average stock is less than \$1000.....	25.00
(b) When average stock is \$1000 and less than \$2500....	50.00
(c) When average stock is \$2500 and less than \$5000....	75.00
(d) When average stock is \$5000 and less than \$6500....	100.00
(e) When stock averages \$6500 or more.....	125.00
65. Dye house or agent for same.....	15.00
66. Electric Light Company.....	300.00
67. Electrician. Each person, firm or corporation doing or soliciting electrical work or handling electrical goods	25.00
68. Express Companies. Each	50.00
69. Fertilizer Factory or mixer, or manipulator. Each person firm or corporation conducting.....	75.00
70. Fertilizer. Each dealer in or agent for the sale of....	15.00
71. Feather Renovator. Each	15.00
72. Flying Jenny. Conducting each, per week, or fraction thereof	10.00
73. Fire works. Each dealer in.....	10.00
74. Fish or Oysters. Each dealer in.....	10.00
75. Foreman. Each foreman or superintendent of works where cost of improvements amounts to more than \$500 and same has not been let by contract.....	10.00

76. Fortune teller. Each fortune teller, mind reader, medium, mesmerist, clairvoyance, hypnotist (Except when performing in licensed circus or theatre:	
(a) Per week	10.00
(b) Per annum	100.00
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77. Fruit dealer. Each fruit dealer:	
(a) Inside store	5.00
(b) Where sidewalk is used. No store in connection.....	50.00
78. Fruit peddler:	
(a) Each peddler with basket or handcart.....	10.00
(b) Each peddler with wagon.....	20.00
79. Fruit and produce dealer or Broker:	
(a) Each fruit or produce dealer or broker selling from car other than licensed dealers.....	50.00
(b) Each fruit and produce dealer other than commission merchants, and wholesale fruit dealers.....	50.00
80. Fruit trees. Each dealer in fruit trees, shrubs or plants or who solicits orders therefor.....	25.00
81. Furniture. Each dealer in furniture (not including hereunder carpets, rugs, or matting) selling new or second hand furniture:	
(a) Where average stock is less than \$1000.00.....	25.00
(b) Where average stock is \$1000 and less than \$2500.00...	50.00
(c) Where average stock is \$2500 and less than \$5000...	75.00
(d) Where average stock is \$5000 or over.....	100.00
82. Grain dealer, each wholesale dealer in grain, hay or feed stuffs.....	75.00
83. Foundry or machine shops. Each person, firm or corporation conducting where work is done for public..	75.00
84. Grocer. Each retail dealer in:	
(a) Where average stock is less than \$1000.....	25.00
(b) Where average stock is \$1000 and less than \$2500...	50.00
(c) Where average stock is \$2500.00 and less than \$5000.	75.00
(d) Where average stock is \$5000 or over.....	100.00
85. Grocer. Wholesale. Each wholesale grocer.....	200.00
86. Guaranty Company. Each person, firm or corporation who executes official or personal bonds or who transacts a guaranty & loan and investment Company.	10.00
87. Gunshop. Locksmith or gun repair shop. Each....	15.00
88. Hack, Coach or Omnibus:	
(a) Operating with one horse.....	25.00
(b) Operating with two horses.....	30.00
89. Harness. Each dealer and running a repair shop....	25.00
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90. Hardware. Each dealer in hardware:	
(a) Where average stock is less than \$1000.....	25.00
(b) Where average stock is \$1000 and less than \$2500...	50.00
(c) Where average stock is \$2500 and less than \$5000...	75.00
(d) Where average stock is \$5000 or more.....	100.00

91. Hides. Each agent for sale of or dealer in.....	25.00
92. Hotels. Conducting each:	
(a) With 15 rooms or less.....	25.00
(b) With over 15 rooms.....	50.00
93. Ice factory or agent for dealer in Ice.....	100.00
94. Ice cream. Each Ice Cream parlor or dealer in ice Cream except soda fountains.....	10.00
95. Infirmary or Hospital. Conducting each:	
(a) Where a charity ward is furnished.....	25.00
(b) Where no charity ward is furnished.....	50.00
96. Insurance. Each insurance agent for each company represented:	
(a) Benefit; mutual aid assessment Company or benevo- lent society	10.00
(b) Each fire company	20.00
(c) Each life company.....	50.00
(d) Each Plate Glass or boiler insurance company.....	10.00
(e) Each personal accident Insurance Company.....	20.00
(f) Each employers' Liability Insurance Company.....	20.00
(g) Each live stock Insurance Company.....	10.00
97. Jewelry. Each dealer in:	
(a) Where average stock is less than \$1000.....	25.00
(b) Where average stock is \$1000 but less than \$2500...	50.00
(c) Where average stock is \$2500 but less than \$5000...	75.00
(d) Where average stock is \$5000 or more.....	100.00
98. Job Printing. Each person, firm or corporation doing	50.00
99. Junk. Each dealer in or dealer in second — ma- chinery	50.00
100. Kodaks, or Photographers' supplies. Each dealer in.	50.00
101. Labor agent. Each person inducing or endeavoring to induce laborers to leave the City for employment elsewhere	25.00
102. Land Company. Each person firm or corporation doing business as a Land Company.....	25.00
103. Laundry. Each laundry or agent for a laundry....	50.00
14	
104. Lawyer; Doctor; Dentist or Osteopath. Each person and where doing business as a firm, each member thereof:	
(a) Whose gross income does not exceed \$1250.....	20.00
(b) Whose gross income is \$1250 and does not exceed 2500	40.00
(c) Whose gross income is \$2500, or over.....	60.00
105. Live stock dealers. Each person, firm corporation conducting a sales stable.....	100.00
106. Livery and Feed Stables. Each person conducting:	
(a) Each person conducting together with a transfer busi- ness with a sales stable.....	100.00
107. Lumber. Each person conducting lumber yard....	25.00

108. Lumber Broker. Each person, firm or corporation conducting or buying and selling lumber maintaining an office in Talladega.....	25.00
109. Lunch stand. Each person conducting.....	25.00
110. Machinery. Each dealer in or agent for sale of....	25.00
111. Marble. Each dealer in marble or stone or agent for dealer in marble or stone, soliciting orders for marble or stone	25.00
112. Mattress maker. Each.....	10.00
113. Meat Market. Each person, firm or corporation who as principal or agent receives orders in the City and delivers by <i>retain</i> therein or supplies green meats therein	75.00
114. Meats. Each dealer in who maintains no place of business but delivers from wagon per day, for each wagon	2.00
115. Green Meats. Each wholesale dealer selling on commission or otherwise any green or dry salt meats....	50.00
116. Merchandise broker. Each broker representing a person or firm in this State or is broker for business conducted in this State whether carrying stock or not	50.00
117. Merchant Tailor. Each person who does, or who solicits or receives orders for others, who do tailoring	25.00
118. Mercantile or commercial agency. Each person firm or corporation conducting, or conducting a retail credit agency by which is meant supplying information as to the credit or standing of individuals or firms	50.00
119. Mills. Each person, firm or corporation conducting:	
(a) A corn or flour or grist mill.....	50.00
(b) A hosiery Mill	50.00
15	
(c) An Oil Mill	100.00
120. Millinery. Each person doing millinery business....	25.00
121. Money Broker. Each person lending or advancing money on personal property, or taking waive notes or charging for making examination or inspection or drafting transfers or liens when such charges exceed the legal rate on interest.....	100.00
(This paragraph applies to that class of business conducted by short term money lenders or brokers.)	
122. Museum or Exhibition. Each performance of sleight of hand show, animal show, or any other shows save those licensed under either paragraph 37, 38 or 129, hereof, per day.....	10.00
123. Music. Each dealer in music or musical instruments where principal stock in trade.....	50.00

124. News Papers. Each person, firm or corporation conducting:	
(a) Daily news papers.....	100.00
(b) A weekly news paper.....	50.00
125. News Dealer. Each person, firm or corporation....	15.00
126. Oculist. (Except holders of a doctor's license, each.	25.00
127. Oils. Each person, or agent who sells in quantities of 25 gallons or more.....	200.00
128. Optician. Each optician or dealer in spectacles or eyeglasses (except a holder of a druggist's or jeweler's license, hereunder.....	15.00
129. Opera House or Treatre, Each.....	50.00
130. Packing house Products, not including green meats, each dealer in or broker for, (except a holder of a merchandise broker's license hereunder).....	50.00
131. Palmist. Each (Per week).....	10.00
132. Pawn Broker or pawn broker's agent, each.....	100.00
133. Peanut Roaster. Each person operating in addition to other licenses	5.00
134. Peddler. Each peddler who sells or takes orders for any household furniture or furnishings or jewelry or wearing apparel where title is retained or conditional sale is made.....	50.00
— Photographer. Each	25.00
136. Piano Tuner. Each (except holder of music dealer's license hereunder	5.00
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137. Pistol or rifles cartridges. Each dealer in.....	10.00
138. Pistols. Each dealer in pistols or bowie knives or dirk knives, whether principal stock in trade or not	25.00
139. Playing cards. Each dealer in.....	5.00
140. Plumber or Gas Fitter or Steam Fitter, each.....	50.00
141. Railroads. Each railroad keeping an office or place of business within the City of Talladega and engaged in operating a railroad for the transportation of freights or passengers to and from the City of Talladega, to and from other points within the State:	
(a) When the main line of such railroad in the State of Alabama does not exceed in length 25 miles.....	150.00
(b) Whose main line of railroad within the State of Alabama exceeds 25 miles.....	250.00
142. Real Estate Agent. Any person selling or renting or offering to sell or rent real estate for a compensation, or who holds himself out as such.....	25.00
143. Restaurant. Each person, firm or corporation conducting a restaurant or eating house.....	25.00
144. Roofer. Each gravel slate or metal roofer.....	25.00
145. Safes. Each dealer in where principal stock in trade	25.00

146. Saw Mill or planing Mill. Each person, firm or corporation conducting, whether in connection with a lumber — or not.....	100.00
147. Shingles. Each dealer in.....	15.00
148. Scissors or knife Sharpeners. Each.....	5.00
149. Script. Each person who buys or deals in witness certificates or tickets issued by any Court, or officer or barters in officer's fees, or buys script therefor.....	50.00
150. Sewing Machines. Each person, firm or corporation dealing in:	
(a) Where principal stock in trade.....	50.00
(b) Where not principal stock in trade.....	25.00
151. Shoes. Each person, firm or corporation dealing in shoes or boots, whether principal stock in trade or not:	
(a) Where stock averages less than \$1000.....	25.00
(b) Where stock averages \$1000 but less than \$2500.....	50.00
(c) Where stock averages \$2500 but less than \$5000.....	75.00
(d) Where stock averages \$5000 or more.....	100.00
17 (Provided that the holder of a license under a subdivision of paragraph 64 hereunder shall not be required to take out a license under this paragraph.)	
152. Shooting Gallery. Each.....	10.00
153. Sign Painter. Not licensed as a painter. Each....	10.00
154. Skating Rink. Each	25.00
155. Slot Machines. Each of any kind or description....	2.00
156. Stoves. Each dealer in (except the holder of a license under paragraphs 81 or 90 hereof):	
(a) Where principal stock in trade.....	50.00
(b) Where not principal stock in trade.....	25.00
157. Soda water fountains, conducting each.....	25.00
158. Telegraph Company. Each person, firm or corporation commercially engaged in business sending messages to and from the City to and from points in the state of Alabama for hire or reward.....	100.00
159. Telephone Company. Each person, firm or corporation conducting a telephone exchange, charging for a single residence phone \$1.50 or more per month, or for business telephone \$2.50 per month, or more.	250.00
160. Tin shops. Conducting each tin shop.....	15.00
161. Tobacco and cigars, when not principal stock in trade.	5.00
161. Tombstones. Each dealer in or agent for, the sale of	25.00
161. Tombstone manufacturer, or manufacturer of iron markers for graves (not otherwise licensed) Each..	25.00
162. Trading stamps. Each person, firm or corporation doing business as a trading stamp company or concern	50.00
163. Transient physician. Each transient physician or vender of spectacles, or eye glasses or patent medicines, or compounds sold as medicine, per week....	10.00

164. Theatorium or electric theatre, each.....	40.00
165. Typewriting machines. Each dealer in or agent for the sale of.....	15.00
166. Undertakers. Each person, firm or corporation, doing business as.....	50.00
167. Upholsterer. Each person, firm or corporation doing business as.....	10.00
168. Veterinary. Each person, firm or corporation acting as	25.00

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169. Warehouse. Each person, firm or corporation conducting, for each warehouse.....	50.00
170. Watchmaker or watch repairer. Each.....	15.00

(Holder of jeweler's license exempted herefrom.)

171. Woodyard or dealer in wood. Conducting or operating for each dealer or yard.....	10.00
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(Holder of planing mill and saw mill license or either exempt herefrom.)

172. General advance or credit merchants, doing a general mercantile and advance business on long credits:	
(a) Whose average stock does not exceed \$5,000.00.....	100.00
(b) Whose average stock is \$5,000.00 but less than \$7,500.00	125.00
(c) Whose average stock is \$7,500.00 but less than \$10,000.00	150.00
(d) Whose average stock is \$10,000.00, but does not exceed \$12500.00	175.00
(e) Whose average stock is more than \$12,500.00.....	200.00

The holder of a license under this paragraph shall not be authorized to engage in selling buggies or wagons or live stock except when purchased from live stock dealers or when such live stock is received in payment of existing indebtedness, nor engage in any other business, except that specifically described herein.

173. Beverages. Any person, firm or corporation selling in any quantity any beverage containing any hops, malt or any percentages of alcohol, whether intoxicating or not.....	200.00
174. Shoe shop, or Shoe Repair shop. Each person, firm or corporation conducting.....	10.00

SECTION 2. Be it further ordained by the City Council of Talladega, that the licenses required by this Ordinance, *is* and *is* declared to be in the exercise of the police power of the City of Talladega, as well as for the purpose of raising revenue for said City.

SECTION 3. Be it further ordained by the City Council of Talladega, that no person, firm or corporation shall conduct, engage in

or carry on any trade, business, profession or vocation, for which a license is required by this Ordinance, or any other Ordinance of the City without first obtaining from the City Clerk of Talladega a license therefor and paying to such Clerk the prescribed amount thereof, as hereinbefore fixed. And when such person, firm or corporation is engaged in two or more of such businesses, vocations, callings or professions, for which a license is required, such person, firm or corporation shall pay for and take out a license for each of the same.

SECTION 4. Be it further ordained by the City Council of Talladega that any person, firm or corporation, who shall engage in any trade, business or profession, or keep any establishment, or do any act or maintain an office for which a license is required by the City of Talladega, without first obtaining such license, shall be guilty of an offense, and upon conviction therefor, shall be fined not less than one and not more than One Hundred Dollars for each offense, and each day shall constitute a separate offense.

SECTION 5. Be it further ordained by the City Council of Talladega, that for each license issued, the Clerk shall charge the applicant therefor a fee of 25 cents, which shall be turned into the City Treasury.

SECTION 6. Be it further ordained by the City Council of Talladega, that the Clerk before issuing such license, may require a sworn statement as to the amount of capital invested, or the value of the goods or other stock or the gross income, and may refuse to issue a license until such affidavit is made. The license hereinabove prescribed as to persons, firms or corporations engaged in business in connection with interstate business, shall be confined to that portion within the limits of the State, and where such person, firm or corporation has an office or transacts business in the City or Town imposing the license.

SECTION 7. Be it further ordained by the City Council of Talladega, that the license herein required, shall be due on the 1st day of January of each year, and shall expire on the 31st day of December of the year for which the same issued.

SECTION 8. Be it further ordained by the City Council of Talladega, that in case the license for any business, trade, occupation or profession is taken out before the 1st day of July, the full amount of such license shall be paid; and when taken out after the 1st day of July one-half the license shall be charged, except upon those subjects for which daily, weekly, monthly, quarterly or semi-annually licenses are provided, in which event the applicant shall pay the full prescribed amount therefor, irrespective of the time when the same is so taken out.

20 SECTION 9. Be it further ordained by the City Council of Talladega, that for three months beginning October 1st, 1908 and ending December 31st, 1908, any person, firm or corporation, who shall desire to engage in or carry on any of the businesses, professions, vocations, trades or callings, for which a license is required by this ordinance, shall take out and pay to the said Clerk of Talladega, one-fourth of the amount hereinabove fixed and prescribed

for such license, which license shall expire on December 31st, 1908; and thereafter, all such persons, firms or corporations, shall take out and pay for the license as hereinbefore prescribed.

SECTION 10. Be it further ordained by the City Council of Talladega, That no license shall be transferred except with the consent of the City Council, and no license shall be transferred more than once, and never from one business to another.

Read and adopted in open Council.

S. C. OLIVER, *Mayor*.

Attest:

W. L. COKER, *Clerk*.

An agreed statement of facts, of which the following is a copy, was submitted:

In the City Court of Talladega.

CITY OF TALLADEGA

VS.

D. G. WILLIAMS.

In the above stated cause, it is agreed by the plaintiff and the defendant that the following are the facts, as would be shown by the evidence of the witnesses in the case:

First. The defendant prior to and during the months of October, November and December, 1908, was employed by the Western Union Telegraph Company as the manager of the office of that Company in the said City of Talladega.

Second. The defendant's employer, the Western Union Telegraph Company, was at the times mentioned herein, and is now, a corporation organized and existing under the laws of the State of New York, and is now and was at the times hereinafter mentioned, pursuant to its charter, engaged in the business of a telegraph company in the different States of the Union and in the State of Alabama, and has complied with all the requirements of law authorizing it to do business in the State of Alabama, and has accepted the provisions

21 of the Act of Congress approved the 24th day of July 1863, and entitled, "An Act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal and military purposes." That it has had for the last several years and during the years 1907-1908, and has now, an office and place of business in the City of Talladega, and has been and was during the months of October, November and December, 1908, engaged in the business of transmitting messages between private parties and the Departments and agencies of the United States Government from Talladega to other points in the State of Alabama and also from other points in the State of Alabama to Talladega.

Third. That the City of Talladega did, on or about the 19th day of October, 1908, adopt an ordinance requiring that telegraph companies doing business in the City of Talladega and transmitting

messages from the City of Talladega to other points in the State of Alabama and from other points in the State of Alabama to the City of Talladega, should pay an annual license tax of one hundred dollars. That on or about the 23rd day of November, 1908, the authorities of the said City demanded the payment of \$25.00 from defendant and his employer, as a quarter's license under the said ordinance, alleged to be due October 1, 1908; that defendant and his employer refused to pay said license and has not since paid the same on the ground that the same was illegal, invalid, arbitrary, excessive, confiscatory and unjust. That, thereupon, the authorities of the said City, on or about the 11th day of December, 1908, caused a warrant to issue, charging the defendant with doing business in the said City without a license. The defendant was arrested, and tried upon the said charge and convicted in the Mayor's Court in said City. He was fined \$25.00 and costs, and in the event of his failure to pay such fine and costs was sentenced to labor on the streets for the City for fifty days.

A copy of the said ordinance imposing said license is hereto annexed, marked Exhibit "A", and made a part hereof.

Fourth. That the defendant's employer pays taxes on its lines and other property in the State at a valuation as fixed by the State Board of Assessment, and that the instruments and other personal property at Talladega are assessed at \$—. That it has paid to the State of Alabama \$4,237.45 as taxes for the year 1907, that the population of the City of Talladega, according to the census of 1900 is 5056, and the estimated population of the City of Talladega 22 on the first day of January 1908, was approximately 7500.

Fifth. That on or about the 5th day of June, 1867, the Western Union Telegraph Company filed with the Postmaster General of the United States its written acceptance of the provisions of the Act of Congress approved the 24th day of July 1866, entitled, "An Act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal, military and other purposes;" and thereby assumed the restrictions and burdens imposed, and became entitled to the benefits granted, by the said Act.

Sixth. That on, to wit, the 25th day of November, 1907, the Mayor and Aldermen of Talladega passed and adopted an ordinance in all respects properly and legally adopting the new Municipal Code of Alabama passed by the Legislature of Alabama, on 13th day of August, 1907, in all respects as is provided for in said code.

It is further agreed that should either party wish to show any other or further facts, it may be done in the ordinary way.

W. B. HARRISON,
Att'y for Plaintiff.
RAY RUSHTON,
Att'y for Def't.

M. T. DU BOSE, sworn in behalf of the defendant, testified as follows: That she was the manager of the office of the Western Union Telegraph Company, at Talladega during the months of January,

February, March, April, May and June, 1908. That the expenses of the office for the month of January, 1908, were \$90.43; for February, \$88.75; for March \$91.91; for April, \$85.35; for May, \$106.97; for June \$86.42. That one of the items of the June expense was \$10.00 for "repairs," and that one of the items for the same month was \$10.00 for a "claim," paid by the Talladega office to one Hughes for damages on account of a delayed message, which was sent from Talladega. The first item was objected to on the ground that the expenditure was not for expense of conducting the business; and the second item was objected to on the ground that it was for a "claim" paid to a man by the name of Hughes"; and both claims were objected to on the further ground that the evidence was immaterial and incompetent. The witness further testified that the item of \$10.00 for "repairs" was for an awning for the front of the office; that the sun shone into the office; that the office faced

West; that the office was very warm. The objections to both
23 items were sustained by the Court, and the defendant then and there duly and legally excepted.

The witness was asked the amount of receipts on intra-state messages at the Talladega office for the month of January, 1908, and the question was objected to on the ground that it was not shown that the witness knew of her own knowledge, and that her original record was not introduced. The witness swore that she looked for the original record; that she had been unable to find it; that she had looked in the place where it was usually kept; that the last time she saw it, it was in a pigeon hole in the desk where she kept such records, and that she had looked in that pigeon hole for it. The objection was sustained by the Court and defendant then and there duly excepted.

As a further predicate for the question, defendant introduced the auditor of the Talladega Division of the Western Union Telegraph Company, for the purpose of showing that it was the rule of the company to destroy all records after eight months. The auditor testified that he knew the rule and had himself instructed the officers concerning the same. The objection was sustained and the answer was not permitted by the Court. Defendant then and there duly and legally excepted.

Witness Du Bose further testified that the receipts on the intra-state messages for February were \$47.42; for March \$39.44; for April \$44.68; for May \$41.79; for June \$43.72. That the receipts on interstate messages for the Talladega Office for the months of January, February, March, April, May and June, 1908, were \$937.01. That during these months she was the only operator employed there. That one messenger boy was employed. That the office consisted of one room and that it would have required the same office force to conduct the intra-state business alone if there had been no inter-state business. That the expenses incurred were necessary expenses in the operation of the office.

On Cross Examination, witness Du Bose testified that a message originating at Talladega sent to some point out of the State and then to another point in Alabama is an intra-state message; that the re-

ceipts at the Talladega office mean the actual money handed over the counter, and that it does not include messages sent collect; that if a message is sent from Talladega to some other point in the State collect, the pay for the message is not noted in her statement; that she testified only as to the actual receipts of money, and that her records do not show that the amount paid for messages which
24 were prepaid from points within the state to Talladega; and that the amount of the income testified to was based entirely on the amount of money received at the Talladega office.

J. M. BARTEE, sworn on behalf of the defendant, testified as follows: That he was manager of the Talladega office for the months of July, August and September, 1908. That the total expenditures for the office during those months were \$265.91. That the expenditures were necessary for the operation and maintenance of the office. That during that time he was the only operator employed there. That one messenger boy was employed. That the office consisted of one room and a battery room. That to operate the office for the purpose of doing only intra-state business would have necessitated as large an office force as it would to operate the entire business, including inter-state messages. That the amount received at the Talladega office from intra-state messages during the months of July, August and September, 1908, was \$120.49. That the amount received at the office during the months of July, August and September, 1908, on account of inter-state messages was \$386.91. That the total business done at the office during those months was \$652.82. That during those months there was no other commercial telegraph office in the City of Talladega.

On cross examination, witness Bartee testified that he did not know how many messages were sent to the Talladega office during that time from other points in the state, which messages were prepaid, but that he had a record of them. That he could not state without checking it out from his book; that he could not say of his own knowledge how much income the company received from messages sent collect from this office to other towns in the state.

D. G. WILLIAMS, sworn in his own behalf, testified as follows: That he was manager of the Western Union office at Talladega for a part of the month- of October, November and December, 1908. That the total expenditures for the office for the months of October, November and December, 1908 were \$289.83. That those expenses were necessary in maintaining and operating the office. That the same expense would have been necessary to operate and maintain the business if the office had done only intra-state business. That he was the only operator employed there during that time. That one messenger boy was employed. That the office consisted of one room and a battery room. That the total amount of money received
25 at the office during the months of October, November and December, 1908, on account of intra-state messages was \$128.16. That the total amount of money received during the said months at that office on account of inter-state messages was

\$472.51. That the total receipts on account of inter and intra-state messages for that time was \$600.67. That the lines of the Western Union Telegraph Company enter and leave the City of Talladega over the right of way of the Louisville & Nashville Railroad and the Southern Railroad, which are public railroads. That within the City of Talladega, the company has two lines which leave the right of way of the L. & N. at Spring Street, follow Spring Street to the corner of Spring and Battle come up Battle to the alley between Court and Spring, and then to North Street, and thence to the office down East Street. That the lines leave the right of way of the Southern Railway Company and come up Court Street to the Exchange Hotel, and then to the office. That the streets are used by the public—open public streets. That some intra-state messages are sent from the Talladega office collect, and that some intrastate messages are received at the Talladega office collect, and also inter-state messages are sent and received collect.

"Q. How do those messages compare with one another as to the amount of receipts? A. They almost balance. I know that the messages themselves, that is, in receipts, month in and month out, will very nearly balance. They will come out two or three over or less. Generally speaking, though, they will nearly balance; that is, the received messages collect and sent messages collect, interstate and intra-state, will very nearly balance."

That during the time he was a manager and during the time alleged in the complaint, the Western Union Telegraph Company was the only company doing a commercial business within the City of Talladega. That the office is equipped with modern appliances. That it gives messenger service. That one messenger is employed and that he had been able to do the business satisfactorily. That during the time he had been manager and the times mentioned in the complaint, no special officer of the City of Talladega had spoken to him or had gone to the company and stated that he was there for the purpose of inspecting the company's property.

On Cross Examination, the witness Williams testified that he understood intra-state messages to mean messages handled to and from local towns within the State of Alabama; that messages originating in Alabama, but carried across the line and delivered back again in Alabama, are intra-state messages. That the figures given as to the

26 income of the company do not include messages sent from the Talladega office to another office in the state collect. That he had the figures in his possession. That the figures given to the court do not include the compensation received by the company on messages originating at other points in the State and prepaid to Talladega.

On redirect examination, the witness Williams testified that he daily relayed Government messages at the Talladega office. That he received messages between the different departments of the Government of the United States at this office from points within the state. That preference was given to Government messages. That Government messages were sent at a reduced rate.

It was admitted as a fact that the rates charged for Government services are reduced rates, fixed by the Postmaster General of the United States and that such rates were charged on Government messages during the time mentioned in the complaint.

Witness W. C. COKER, sworn in behalf of the defendant, testified that he was the Clerk of the City of Talladega, and had been so employed since April 15th, 1907. That he had no knowledge of any sum of money being paid by the City of Talladega for the purpose of inspecting the property of the Western Union Telegraph Company, either its lines or any other property, during the time he had been so employed. That the city had paid nothing on account of police supervision and police inspection of the company's property, except in a general way for the inspection of every man's property. That he kept the cash books of the city during the time of his employment. That he drew authorized checks, seldom paid cash. That he had not paid out any cash on account of the inspection of the company's property. That he had not sent any check on account of inspection of the company's property. That during the time of his employment the city had not paid any money on account of police inspection or supervision of the property of the Western Union Telegraph Company in the City of Talladega, except as spent in a general way as to everybody's property.

Witness, J. C. BOWIE, sworn on behalf of the defendant, testified that he was the treasurer of the City of Talladega during all of the year 1908. That he had no knowledge of any money being paid by the City of Talladega to any person for police inspection or police supervision of the property or lines of the Western Union Telegraph Company in the City of Talladega during the year 1908.

Witness, A. J. BACON, sworn on behalf of the defendant, testified that he was district auditor of the Western Union Telegraph Company. That in addition to the moneys actually expended at the Talladega office, there were other expenses, namely: the expenses for stationary, battery material, and superintendence. That the sum expended for superintendence for the year 1908 was \$130.00; Stationary, approximately \$30.00; battery supplies \$63. That from the figures given by the witnesses on the stand in his presence it was shown that the total intrastate receipts for the Talladega office for 1908 were \$502.63. That the figures given by the witnesses in his presence showed the total inter-state receipts of the office for the year 1908 to be \$1796.43, making the total receipts for the year 1908, \$2299.06. That the expense of maintenance of lines and batteries, covering the expense of linemen visiting Talladega for the purpose of keeping the line and battery in proper repair, amounts to \$500.00. That the figures given by the witnesses on the stand in his presence showed a total expense for maintaining the office at Talladega for the year, 1908, including expense for stationary, superintendence and maintenance of line, to be \$1983.26. That merely including the figures for ex-

penses given by the witnesses who had preceded him on the stand, was \$1100.83. That the general expenses of operating the office charged against intra-state receipts exceeded the intra-state receipts in the sum of \$821.20.

Witness was asked what part of the general expense of the office was charged against the intra-state receipts. The complainant objected, the objection was sustained by the Court, and the defendant then and there duly and legally excepted.

On cross examination, witness Bacon testified that the \$600.00 for linemen was an approximate sum, based on the linemen who covered, Talladega. That the company had in this district about four linemen, with an aggregate expense of about \$270.00 a month total. That Talladega was charged with but \$50.00 a month. That witness's only knowledge of these facts was by reports made to him. He had no personal knowledge of them and did not know of his own knowledge that a lineman had ever been in Talladega. Witness further stated—"If you cut off my knowledge of reports you cut off my knowledge entirely.

The defendant offered and proved the Act of Congress enacted the 24th day of July, 1866, entitled, "An act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal, military and other purposes;

and also the Act of Congress enacted on or about the 8th day of June, 1872, Chapter 335, 17 U. S. Statutes at Large, establishing post roads; and also the Act of Congress enacted on or about March 1st, 1884, Chapter 9, 23 U. S. Statutes at Large, making all public roads and highways post roads.

The foregoing was all the evidence in the case, upon which Court reserved his decision, and later, on the 16th day of February, 1909, rendered his decision against the defendant, and judgment was that day entered thereupon. To which judgment, defendant then and there duly and legally excepted.

Wherefore, the said D. G. Williams prays that this be taken as his legal bill of exceptions in said cause, upon the same being duly signed according to law by His Honor, Judge G. K. Miller, who presided at the trial of said cause:

Presented to the undersigned within the 90 days allowed by law on this 11th day of March, 1909.

G. K. MILLER, *Judge.*

Approved and ordered filed this 19th day of April, 1909.

G. K. MILLER,
Judge of the City Court of Talladega.

Appeal Bond.

STATE OF ALABAMA,
Talladega County:

Know all men by these presents, That we, D. G. Williams as principal and J. M. Hicks and J. H. Hicks, as sureties are held and firmly bound unto the City of Talladega, a municipal corporation,

in the sum of Two Hundred Dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally and firmly by these presents.

The condition of this obligation is such that whereas on the 16th day of February, 1909, the above bounden D. G. Williams was adjudged guilty, by the City Court of Talladega, of a violation of an ordinance of the City of Talladega, in a cause pending in said Court wherein the City of Talladega was plaintiff and the said D. G. Williams was defendant, and the said D. G. Williams was fined the sum of \$25.00 and costs, and from said judgment and decree of said City Court of Talladega, he, the said D. G. Williams, has

29 prayed an appeal to the Supreme Court of Alabama,
Now if the said D. G. Williams shall abd will abide by and perform whatever judgment, decree or sentence may be rendered or imposed by said Supreme Court of Alabama, then this obligation to be void: otherwise to remain in full force and effect.

Witness our hands and seals this the 16th day of February, 1909.

D. G. WILLIAMS.	[L. s.]
J. H. HICKS.	[L. s.]
J. M. HICKS.	[L. s.]

Approved this 16th day of February, 1909.

JOHN D. McNEEL, *Clerk.*

Notice of Appeal.

In the City Court of Talladega.

CITY OF TALLADEGA

vs.

D. G. WILLIAMS.

To the City of Talladega, or Its Attorney of Record, W. B. Harrison:

Whereas, D. G. Williams has taken an appeal from the judgment rendered by the City Court of Talladega in the above named cause.

Now, you are, therefore, cited to appear at the first Monday of the term of the Supreme Court of Alabama next after the expiration of twenty days from the date of said appeal, to-wit: the 16th day of February, 1909.

To the Sheriff of Talladega County to execute.

Witness my hand this 7th day of May, 1909.

J. J. PIERCE, *Clerk.*

I have executed the within writ this 8th day of May, 1909, by leaving a copy with S. C. Oliver, Mayor, City of Talladega.

W. R. MIDDLETON,
Sheriff of Talladega County, Alabama.

Certificate.

STATE OF ALABAMA,
Talladega County:

I, J. J. Pierce, Clerk of the City Court of Talladega, do hereby certify that the foregoing pages numbered from one to twenty-nine, inclusive, contains a full, true and complete transcript of the record and proceedings of the said City Court of Talladega in a cause therein pending wherein City of Talladega was plaintiff and

30 D. G. Williams was defendant, and I further certify that the said D. G. Williams, defendant did on the 16th day of February, 1909, pray and take an appeal to the Supreme Court of Alabama, returnable to the present term thereof, from that certain judgment rendered against him in said cause in the said City Court of Talladega, on the 16th day of February, 1909; all of which I hereby certify to the said Supreme Court of Alabama.

Witness my hand and seal of the Court on this the 8th day of May, 1909.

J. J. PIERCE,
Clerk of the City Court of Talladega.

Assignment of Errors.

D. G. WILLIAMS, Appellant.
vs.
THE CITY OF TALLADEGA, Appellee.

The Appellant D. G. Williams, says there is error in the record as follows:

1. The Court erred in adjudging the Appellant guilty as charged in the complaint, as shown by the judgment (Record pp. 5, 6).

2. The Court erred in adjudging the appellant guilty, as charged in the complaint under the evidence, which among other things showed conclusively that the ordinance imposed as unreasonable amount. (Rec. pp. 7 to 27.)

3. The Court erred in refusing to permit witness Du Bose to testify as to the sum of money *redired* from "intra-state business" of the Western Union office at Talladega for the month of January, 1908. (Rec. pp. 22 to 23.)

4. The Court erred in sustaining appellee's objection to the testimony of the Auditor of the Telegraph Company to the effect that it was the custom or rule of the Company to destroy the original records of the Company as to receipts after eight months, and in excluding such testimony. (Rec. p. 23.)

5. The Court erred in adjudging the appellant guilty as charged in the complaint (Record pp. 36) when the evidence was uncontradicted that appellant's employer, in whose service he was engaged when arrested, and whose business he was conducting had accepted

and was acting pursuant to the provisions of the Act of Congress passed July 24th, 1866 (Rec. pp. 7 to 27).

31 6. The Court erred in adjudging the appellant guilty as charged in the complaint under an ordinance imposing a license tax when the said ordinance did not exclude messages sent in the service of the Government of the United States, and the evidence showed without contradiction that the appellant's employer in whose service he was engaged, had accepted and was acting pursuant to the terms of the Act of Congress passed July 24th, 1866 (Rec. pp. 7 to 27).

7. The Court erred in adjudging the appellant guilty, as charged in the complaint, under an ordinance imposing a tax for revenue, and not for public regulation or inspection, when the evidence was uncontradicted that the appellant's employer, in whose service he was engaged during the times mentioned in the complaint, had accepted and was acting pursuant to the provisions of the Act of Congress passed July 24, 1866.

8. The Court erred in adjudging the Appellant guilty of transacting or carrying on business within the City of Talladega without first taking out and paying for a license as required by an ordinance of the City of Talladega and adjudging that the appellant pay to the City of Talladega a fine of twenty-five dollars and also the costs of the prosecution.

RAY RUSHTON,
WM. M. WILLIAMS,
Attorneys for Appellant.

32 *Minutes Supreme Court of Alabama, November Term, 1908-9.*

THURSDAY, June 3, 1909.

The Supreme Court met pursuant to adjournment.
Present: All the Justices.

D. G. WILLIAMS
vs.
CITY OF TALLADEGA.

7 Div., 290.

Appeal from Talladega City Court.

Come the parties by attorneys and argue and submit this cause for decision.

Minutes Supreme Court of Alabama, November Term, 1908-9.

THURSDAY, December 21, 1909.

The Court met pursuant to adjournment.

Present: All the Justices.

D. G. WILLIAMS

vs.

CITY OF TALLADEGA.

7 Div., 290.

Appeal from Talladega City Court.

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the court, it is considered that in the record and proceedings of the City Court there is no error. It is therefore considered that the judgment of the City Court be in all things affirmed. It is also considered that the Appellant and J. H. Hicks and J. M. Hicks sureties on the appeal bond pay the costs of appeal of this Court and of the City Court.

33 THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, November Term, 1909-10.

7 Div., 290.

D. G. WILLIAMS

v.

THE CITY OF TALLADEGA.

Appeal from Talladega City Court.

DEC. 21, 1909.

SAYRE, J.:

Plaintiff in appeal was convicted of the violation of an ordinance of the city of Talladega because, as agent of the Western Union Telegraph Company, he engaged in the business of sending messages between that city and other points in this State without first obtaining a license. The question of first importance raised by the appeal relates to the operation and effect in such case of the Act of Congress of July 24th, 1866, sections 5263 to 5268 of the Revised Statutes of the United States, known commonly as the Post Roads Act. Appellant's contention is that this act and the acceptance by the telegraph company of its provisions constitute the company a licensee of the United States in respect to its intrastate as well as its

interstate business of transmitting messages, and render it immune to the imposition of a license tax by the State. The contention confesses that the decisions of the Supreme Court of the United States have finally determined that telegraphic messages carried and delivered exclusively within the State are elements of internal commerce, do not fall under the influence of the interstate com-

34 merce clause of the Federal Constitution although the same corporation is using the same agents and instrumentalities in interstate commerce, and are therefore subject to the taxing power of the State. But it is urged that, entirely apart from any question as to how the ordinance in question may be affected by the power of Congress to regulate commerce among the several states, it must be condemned for the reason that it runs contrariwise to the Post Roads Act of Congress passed in pursuance of its power under the Constitution to establish post roads. That act provided "that any telegraph company accepting the said act shall have the right to construct, maintain and operate its lines of telegraph through and on any part of the public domain of the United States in and along any of the military and post roads of the United States which have been or may hereafter be constructed by act of Congress."—7 Fed Ann. St., 205–213. In 1872 Congress passed an act which established as post roads "all railroads or parts of railroads, which are now or may hereafter be in operation." And in 1884 an act "that all public roads and highways while kept up and maintained as such are hereby declared to be post roads."—5 Id., pp. 900, 901. In consideration of these advantages Congress reserved the right of precedence in the use for public business of the lines of companies accepting the benefits of the act at rates to be fixed by the Postmaster-General. "Thus, as to government business, companies of this class become government agencies."—*Telegraph Co. v. Texas*, 105 U. S., 460. It is made to appear in the agreed statement of facts that the Western Union Company has accepted the benefits of the act and that the roads along which its lines are constructed within the State of Alabama and the City of Talladega are post roads. The argument proceeds: There is no reason to suppose that the government of the United States did not intend to secure for its postal, military, and other business between points within a state facilities equal to those secured for its business between points in different states; one may be as important as the other. The conclusion is that Congress intended to grant the right to carry on the business of telegraphing between points within the State, and granted the right in a way that put it beyond the interference of the State.

It is to be observed that the argument lays out of the case all consideration of the relation of the business of sending telegraphic messages in interstate commerce; and this it may properly do, for while

35 on one hand the power of the State to tax messages exclusively between points within the State as a part of internal commerce is established by the repeated decisions of the Supreme Court of the United States, it must, on the other, be conceded that the power conferred upon Congress by the interstate

commerce clause of the Constitution is entirely distinct from the power conferred in respect to the establishment of post roads. The question then is whether the act to which reference is made was intended to confer a franchise upon the Western Union, and other companies accepting its provisions, to carry on an intrastate business in such way as to put it beyond the power of the State to impose a privilege or license tax upon it. This involves a question of Federal Constitution and law, and if it has been determined by the Supreme Court of the United States, that determination must be final so far as we are concerned. We have already quoted the Supreme Court of the United States to the effect that, as to government business, the telegraph company is a government agency. As a summing up of a number of its own decisions it was said by that court in *Western Union Telegraph Co. v. Alabama*, 132 U. S., 472, that the principle in regard to telegraph companies which have accepted the provisions of the Act of Congress of July 24, 1866, is "that they shall not be taxed by the authorities of a State for any messages, or receipts arising from messages, from points within the State to points without or from points without the State to points within, but that such taxes may be levied upon all messages carried and delivered exclusively within the State." There was consideration of the interstate commerce clause, because that too was involved; but the conclusion of the case, and that of the cases cited, could not have been reached except on the theory that the argument here made is not grounded in a correct appreciation of the force and effect of the Act of Congress in relation to telegraph companies.

In *Western Union Telegraph Co. v. Massachusetts*, 125 U. S., 530, a tax was assessed against the company upon the value of its shares which were apportioned to that State on a mileage basis. This was said by the court to be essentially an excise upon the capital of the corporation, and that while it was nominally upon the shares of the capital stock of the company, it was in effect a tax on account of property owned and used by it in the State of Massachusetts. The argument was pressed upon the court that the tax was void because it violated the rights conferred upon the company by the act of July 24, 1866. The court said: "This, however, is merely a permissive statute, and there is no expression in it which implies that this permission to extend its lines along roads not built or owned by the United States, or over and under navigable streams, or over bridges not built or owned by the Federal government, carries with it any exemption from the ordinary burdens of taxation. While the State could not interfere by any specific statute to prevent a corporation from placing its lines along these post roads, or stop the use of them after they were placed there, nevertheless the company receiving the benefit of the laws of the State for the protection of its property and its rights is liable to be taxed upon its real or personal property as any other person would be. It never could have been intended by the Congress of the United States, in conferring upon a corporation of one State the authority to enter the territory of any other State and erect its poles

and lines therein, to establish the proposition that such a company owed no obedience to the laws of the State into which it thus entered, and was under no obligation to pay its fair proportion of the taxes necessary to its support." And *Telegraph Company v. Texas*, supra; *Railroad Co. v. Peniston*, 18 Wall., 5; *Thomson v. Pacific Railroad Co.*, 9 Wall., 579; and *National Bank v. Commonwealth*, 9 Wall., 353, were cited and discussed.

In *Massachusetts v. Western Union Telegraph Company*, 141 U. S., 40, the court again considered the question, considered the effect of the act of Congress on the power of the State to tax, and reached the same conclusion. So also in *St. Louis v. Western Union Telegraph Company*, 148 U. S., 92, where the effort was to charge the company for its use of the streets.

In *Telegraph Company v. Texas*, supra, this language was used: "The Western Union Telegraph Company having accepted the restrictions and obligations of this provision by Congress (the act of July 24, 1866) occupies in Texas the position of an instrument of foreign and interstate commerce, and of a government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business." It was also said: "Any tax, therefore, which the State may put on messages sent by private parties, and not by agents of the government of the United States, from one place to another exclusively within its own jurisdiction, will not be repugnant to the Constitution of the United States." And the cause was reversed with directions which authorized the collection of the tax on the appellant's intrastate messages sent by private parties. The argument now advanced was not specifically an-

37 answered, but the court had the act of Congress before it, and its judgment evidenced an understanding of its meaning repugnant to that contended for by appellant here.

Postal Telegraph Cable Co. v. Charleston, 153 U. S. 692, reviewed the cases we have mentioned and others, and disposed of the identical argument here advanced by saying: "It is obvious that the advantages or privileges that are conferred upon the company by the act of July 24, 1866, are in the line of authority to construct and maintain its lines as a means or instrument of interstate commerce, and are not necessarily inconsistent with a right on the part of the State in which business is done and property acquired to tax the same, within the limitations pointed out in the cases heretofore cited." All this was repeated and reaffirmed in *Western Union Telegraph Co. v. Gottlieb*, 190 U. S. 412.

From the cases we have cited, and from others to be found cited in them, it is to be seen that the argument here made has been repeatedly urged by this appellant's company upon the Supreme Court of the United States without success, and while perhaps it has never been answered in the form in which it is now cast, we cannot assume that it has been misunderstood. It certainly has not been assented to.

Any general discussion of the principles involved will hardly be

deemed necessary after citation of the authorities to which we have referred. They conclude our judgment. Some other considerations leading to the same result, may develop from such brief notice as we shall give to the cases cited by appellant to sustain its position. They are *McCulloch v. Maryland*, 4 Wheat. 316; *Osborn v. Bank*, 9 Wheat. 740; *Western Union Telegraph Co. v. Visalia*, 149 Cal. 744; *San Francisco v. Western Union Telegraph Co.*, 96 Cal. 140; *Western Union Telegraph Co. v. Lakin*, Pac. Rep. (Wash.), May 28, 1909; *Harman v. Chicago*, 147 U. S. 396; *Moran v. New Orleans*, 112 U. S. 69; *California v. Central Pacific Rwy. Co.*, 127 U. S. 1; *Western Union Telegraph Co. v. Texas*, 105 U. S. 460.

McCulloch v. Maryland and *Osborn v. Bank*, in which all the cases on this subject seek support, were, so far as the question here raised is concerned, to the same effect. The latter reviews and reaffirms the principles declared in the first. Those cases settled the constitutional power of Congress to incorporate a bank, and that a State has no constitutional power to tax the bank incorporated by Congress. In the latter case Chief Justice Marshall states that the foundation of the argument in favor of the right of a State to tax the bank was laid in the supposed character of that institution. That argument supposed the corporation to have been originated for the management of an individual concern, to have been founded upon contract between individuals having private trade and private profit for its great end and principle object. To this the Chief Justice replied: "If these premises were true, the conclusion (that the State might tax) drawn from them would be inevitable. This mere private corporation, engaged in its own business, with its own views, would certainly be subject to the taxing power of the State, as any individual would be; and the casual circumstance of its being employed by the government in the transaction of its fiscal affairs would no more exempt the private business from the operation of that power than it would exempt the private business of any individual employed in the same manner." The appellant's company derives its right to exist as a corporation and its right to engage in the business of transmitting telegraphic messages from the State of New York, where it was chartered and organized. We think it may be assumed that this private corporation has private profit for its main object, and that its service to the government is only one incident of an enormous business which it carries on for gain. As was said in *Thomson v. Pacific Railroad*, supra, "it must be remembered that the Bank of the United States was a corporation created by the United States; and, as an agent in the execution of the constitutional powers of the government, was endowed by the act of creation with all its faculties, powers, and functions. It did not owe its existence, or any of its qualities, to State legislation. And its exemption from taxation was put upon this ground." And in *Railroad Co. v. Peniston*, 18 Wall. 5, the court argued: "It cannot be that a State tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the States all power to tax persons or property."

Congress may make contracts with individuals or corporations for services to be rendered to the government, and may, in its discretion, exempt the agencies employed from State taxation which will really prevent or impede the performance of them; but in the absence of all legislation on the part of Congress indicating such exemption, the exemption cannot be applied to the case of a corporation deriving its existence from State law, and exercising its franchise under such law. *Thomson v. Pacific Railroad*, supra.

Harman v. Chicago, and *Moran v. New Orleans*, raised the same question. The effort of those cities was to impose a license tax upon vessels plying the navigable waters of the United States under license from the United States. The decision was that the municipalities had nothing to confer and therefore no privilege to tax. The privilege sought to be taxed was a privilege conferred by Congress only.

In *California v. Pacific Railroad Company* it was considered that franchises conferred by Congress cannot, without its permission, be taxed by the States. One question there was whether the railroad company had a franchise from Congress. The facts were that Congress on July 1, 1862, had passed an act creating and erecting a body corporate and politic in deed and in law, known as the Union Pacific Railroad Company to construct a railroad across the territories of the United States from the Missouri River to the Pacific Ocean and to secure the use of the same to the government for postal, military, and other purposes.—12 Stat. at Large, p. 489. This corporation was subsequently, under the authority of acts of Congress, consolidated with various other corporations, one a corporation chartered by the State of California, thus forming the Central Pacific Railroad Company with the powers and franchises of the constituent companies. The court therefore said that if the Central Pacific Railroad Company was not a Federal corporation, its most important franchises, including that of constructing the railroad were conferred upon it by Congress. It was ruled that those franchises could not be taxed by the states. That case is no authority for the proposition that the act of July 24, 1866, conferred a non-taxable franchise upon the companies accepting its terms, and has never been cited by the Supreme Court of the United States as going to that conclusion, as often as this question has arisen.

We have already quoted enough from *Telegraph Company v. Texas*, to show that it supports the power of the city of Talladega to levy its license tax.

The cases from the Supreme Courts of California and Washington drive to a conclusion different from that we have reached, but they assign a meaning to *McCulloch v. Maryland*, *Telegraph Company v. Texas*, and *Western Union Telegraph Co. v. Massachusetts*, which has not been given to those decisions in the numerous cases in which they have been cited by the Supreme Court of the United States and from some of which we have quoted. These cases from California and Washington rely for immediate authority upon the case of *California v. Central Pacific Railroad Company*. We have

40 said enough to make clear our opinion that these cases are based upon an understanding of the decisions of the Supreme Court of the United States different from our own and this is sufficient to dispose of them.

It is further insisted that the ordinance must be pronounced invalid because it fixes a tax upon the privilege of sending messages by telegraph between points exclusively within the State without excluding message sent for the government of the United States. *Western Union Company v. Texas*, supra, *Le Loup v. Port of Mobile*, 127 U. S. 640, are cited as authority for this insistence. The judgments of those cases pronounced the taxes there involved to be void because it appeared that the burden or a part of the burden of them fell upon interstate commerce upon which the State nor its subdivisions had power to levy any tax whatsoever. In the former of these cases it appeared that the tax was estimated on the basis of messages sent, which included messages sent about the business of interstate commerce. As we have seen, the tax for that reason and to that extent only was declared to be void. In *Le Loup v. Port of Mobile*, the tax was levied upon the occupation without discrimination as to whether it concerned interstate or intrastate business. This court in *Moore v. City of Eufaula*, 97 Ala. 670, proceeding upon reason and the authority of other decisions of the Supreme Court of the United States refused concession to the idea that a privilege tax was void because it did not affirmatively appear that it did not affect the sending of messages on government business. We are satisfied with that decision. In the instant case the tax is limited in the terms of the ordinance levying it to the business of sending messages between points exclusively within the State. The fact that a part of the business done by the company consists in the sending of messages for the government does not affect the right of the State to impose a reasonable privilege tax, as we believe has appeared from a consideration of the decisions of the Supreme Court of the United States. If government messages are transmitted at a reduced rate which has material effect upon the company's income at Talladega, that was the subject of proof and must have been, and must now be, taken into account when passing upon the reasonableness of the license charged.

Prima facie the tax was reasonable. *Gamble v. Montgomery*, 147 Ala. 682, and authorities there cited. But it was competent for the defendant to show by evidence that it was so unreasonable in amount, as to demonstrate an abuse of discretion and an arbitrary interference with private business (*Kendrick v. State*, 142 Ala. 43), and this the defendant endeavored to do.

41 The ordinance imposes a tax for the privilege of transmitting messages between the city of Talladega and points within the State. It does not seek to tax interstate business. The appellant's company, in the effort to show the unreasonableness of the tax, furnished the figures upon which its argument is based, and those figures have been accepted as correct as far as they go, except in one particular to be noted. The company undertook to show its expenses and business done at Talladega during the year 1908, the

year for which the tax was levied, but was not permitted to adduce figures covering the month of January. Thereupon, on the basis of the figures for eleven months, making a pro rata deduction from the amount of the annual license, it shows that the total expense of maintaining the office at Talladega for the eleven months, was \$1,749.56. The total income for the same period, including inter- and intrastate business, was \$2,034.39. The gross income from intrastate business for the period was \$465.70, approximately 22 per centum of the entire income on both kinds of business. It is therefore assumed that intrastate business should be charged with a like percentage of the entire expense, to-wit: 22 per centum of the entire expense, equalling \$384.90. To this is added a pro rata share of the annual tax, \$97.66. The result as thus shown by the appellant is that the company's intrastate business for the eleven months was done at a loss of \$10.86. The figures thus propounded to the court must be amended in one particular against the appellant though the amendment is not of enough consequence to affect our view of the case: In its statement of expenses the company includes an item of \$10.00 paid by the office at Talladega in settlement of a claim for damages made against it. It is clear that the company is not entitled to charge itself with this item in order to make out an invalidation of the tax imposed. It thus appears that the company did business during eleven months at a net loss of 86 cents. On the facts disclosed it is urged that the tax of \$100.00 per annum imposed for the privilege of doing business at Talladega is prohibitory and void.

If it be conceded that the amount of receipts at the Talladega office from messages to and from points in this State is an accurate measure of the value of the intrastate business to which that office contributes in the way of sending and receiving messages whether the tolls are paid there or elsewhere, and that the apportionment of expenses is just what it ought to be—both which concessions
42 seem to us doubtful—yet we cannot accede to the conclusion, necessarily implied by the argument, that the power of the municipality to tax an occupation is dependent upon and limited by the ability of the occupation to earn a profit. It was said in *N. C. & St. L. Rwy. v. Attalla*, 118 Ala. 368, that "The reasonableness or unreasonableness of a license tax can not be determined by the extent of the business of a single individual. There may be competition, or negligence on his part, or other considerations affecting the extent of the business." Granting that appellant's company has no competition at Talladega, and that no negligence in the conduct of its business is made to appear, at least one other consideration is that the city could not know in advance whether the business of the appellant's company would be conducted during the year at a loss or a profit, but it had the right, upon a general survey of all conditions affecting its own welfare and that of the company, so far as they were disclosed by the experience of the past and the probabilities of the future, to levy in advance a reasonable tax, and the court must be led irresistibly to the conclusion that the tax is excessive and prohibitory, upon a like survey, before it can pronounce the tax void. The trifling deficiency shown in this case, occurring as the result of

business for one short period, do not suffice to show an abuse of the taxing power.—See *Atlantic &c. Telegraph Co. v. Philadelphia*, 190 U. S. 160. Unquestionably the amount of business which would probably be done and the possibility of doing it at a profit are elements to be taken into account in fixing a license tax for revenue, but we cannot see the end of a doctrine which would hold that a municipality in levying for a definite period a tax upon an occupation highly useful, though in its nature monopolistic and so relieved of competition reducing its profits, is limited by the power of that occupation to earn a profit during that period. Nor does the evidence afford that view, at once comprehensive and accurate, of the conditions under which the appellant's company does business at Talladega year in and year out, which would justify us in pronouncing the tax in question to be void.

Appellant may be prosecuted for engaging as an agent in the business for which his principal has not taken out a license.—*Nashville, etc. Rwy. Co. v. Atalla*, 118 Ala. 362, and authorities there cited.

On the showing made in the record we are unable to say that the court erred in refusing to permit the witness Du Bose to testify to the receipts of the office during January, 1908, the month next before the eleven months embraced in the period covered by the figures heretofore referred to. The objection seems to have been sustained on the idea that the witness did not have personal knowledge of the fact nor any memorandum, showing the same, known to be correct. Under these conditions the witness could not be heard to state the fact inquired about.

Affirmed.

Dowdell, C. J., Simpson, Anderson, McClellan and Evans JJ., concur.

44 In the Supreme Court of the United States.

D. G. WILLIAMS, Plaintiff in Error,

vs.

THE CITY OF TALLADEGA, Defendant in Error.

UNITED STATES OF AMERICA, ss.:

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Judicial Court of the State of Alabama before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between D. G. Williams and the City of Talladega, wherein was drawn in question the construction of a statute of the United States, to-wit: entitled, "An Act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal, military and other purposes," enacted the 24th day of July, 1866, and the decision was

against the title, right, privilege or exemption specially set up and claimed by the said D. G. Williams under the said statute; a manifest error hath happened to the great damage of the said D. G. Williams, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 27th day of April next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further
 45 to be done therein to correct those errors,—what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 28th day of March, in the year of Our Lord, one thousand nine hundred and ten.

[Seal of the United States Circuit Court, Middle District of Alabama.]

J. W. DIMMICK,
*Clerk of the United States Circuit Court
 for the Middle District of Alabama.*

Allowed by:

J. R. DOWDELL,
Chief Justice of the Supreme Court of Alabama.

Filed in office March 28th, 1910.

R. F. LIGON,
Clerk Supreme Court of Alabama.

46 UNITED STATES OF AMERICA:

To The City of Talladega, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the 27th day of April, next, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Alabama, wherein D. G. Williams is the petitioner in error and The City of Talladega is the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable James R. Dowdell, Chief Justice of the Supreme Court of the State of Alabama, this 28th day of March, 1910.

J. R. DOWDELL,
*Chief Justice of the Supreme Court
 of the State of Alabama.*

Filed in office March 28th, 1910.

R. F. LIGON,
Clerk Supreme Court of Alabama.

Executed by serving a copy of the above writ upon S. C. Oliver,
Mayor of the city of Talladega.

This April 1st, 1910.

W. R. MIDDLETON,
Sheriff of Talladega County, Ala.

47

In the Supreme Court of the United States.

D. G. WILLIAMS, Plaintiff in Error,

vs.

THE CITY OF TALLADEGA, Defendant in Error.

Assignment of Errors.

The above named D. G. Williams, in connection with his petition for writ of error from the Supreme Court of the United States, says that in the record and proceedings in the above stated cause there is manifest error in the following particulars, to-wit:

(1) That the Supreme Court of Alabama erred in affirming the judgment of the City Court of Talladega.

(2) That the Supreme Court of Alabama erred in not reversing the judgment of the City Court of Talladega.

(3) That the Supreme Court of Alabama erred in affirming the judgment of the City Court of Talladega convicting plaintiff in error of doing an intrastate telegraph business in the City of Talladega without a license.

(4) That the Supreme Court of Alabama erred in affirming the judgment of the City Court of Talladega convicting the plaintiff in error of sending and receiving intrastate telegrams in the City of Talladega without first obtaining from the City of Talladega a license so to do.

(5) The Supreme Court of Alabama erred in not sustaining the defence of the plaintiff in error specially claimed and set up by him under the Act of Congress passed the 24th day of July, 1866, entitled, "An Act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal, military and other purposes."

48 (6) The Supreme Court of Alabama erred in its construction of the Act of Congress passed the 24th day of July, 1866, entitled "An Act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal, military and other purposes," in holding that the said Act does not confer on the Western Union Telegraph Company the right to do an intrastate telegraph business so as to exempt it from the payment of the license imposed by the City of Talladega for purposes of revenue and not for police regulation or inspection.

(7) The Supreme Court of Alabama erred in failing to declare the license ordinance of the City of Talladega invalid, because it did not exclude messages sent on United States Government business within the State of Alabama.

(8) The Supreme Court of Alabama erred in not reversing the judgment of the City Court and failing to declare unreasonable the ordinance adopted by that City imposing a license tax of \$100.00 per annum on telegraph companies doing an intrastate telegraph business.

Wherefore, the said D. G. Williams prays that the judgment of the Supreme Court of Alabama be reversed.

RAY RUSHTON,

Attorney for Plaintiff in Error.

Filed in office March 28th, 1910.

R. F. LIGON,

Clerk Supreme Court of Alabama.

49

In the Supreme Court of Alabama.

D. G. WILLIAMS, Appellant,

vs.

THE CITY OF TALLADEGA, Appellee.

To the Hon. James R. Dowdell, Chief Justice:

Now comes the above named appellant, by his attorney, Ray Rushton, and shows to Your Honor that heretofore, during the year 1908, while employed as manager of the office of The Western Union Telegraph Company at the City of Talladega, Alabama, he was arrested upon refusing to pay to the City of Talladega a privilege tax imposed by an ordinance passed by that City requiring each person, firm or corporation commercially engaged in the business of sending messages to and from the City of Talladega to and from points in the State of Alabama to pay a license of \$100.00 per annum. That he was thereafter tried in the City Court of Talladega on the said charge and was convicted, and from such conviction appealed to this Court. That upon the trial in the lower court he urged as defenses:

(1) That he was the agent of the Western Union Telegraph Company, which company had accepted and was doing business under the Act of Congress passed the 24th day of July, 1866, entitled, "An Act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal, military and other purposes."

(2) That the said ordinance imposed a license for revenue and not for police regulation or inspection, and was, therefore, not binding on appellant as an agent of the Western Union Telegraph Company, which company had accepted the Act of Congress of 1866, as aforesaid.

(3) That the said ordinance was invalid, in that it failed to ex-

clude messages which were sent in the business of the United States Government.

50 (4) That the amount of the license tax imposed under the said ordinance was unreasonable, and the ordinance for that reason void.

That all of the said defenses were urged on the appeal to the Supreme Court of Alabama, but notwithstanding such defenses this Court decided against the right, privilege or exemption claimed by the appellant under the above mentioned United States statute, and upheld the validity of the ordinance.

And appellant complains that certain errors were committed in the proceedings in said cause and in the rendition of judgment therein, to the great prejudice of the said appellant, all of which will appear from the respective assignments of error which are filed herewith.

Wherefore, the said D. G. Williams prays that a writ of error, with citation and supersedeas, may be issued in his behalf, returnable to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record and proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States; and also that an order be made fixing the amount of security which the appellant must give on the allowance of said writ of error, and that upon his giving the said security all further proceedings in this Court be stayed until the determination of the writ of error by the Supreme Court of the United States.

(Signed)

RAY RUSHTON,
Attorneys for Appellant.

Presented this 28 day of March, 1910.

(Signed)

J. R. DOWDELL,
Chief Justice of the Supreme Court of Alabama.

Filed in office March 28th, 1910.

R. F. LIGON,
Clerk Supreme Court of Ala.

51 The writ prayed for in the foregoing application is hereby allowed, upon the execution and filing of a bond in the sum of \$1,000, payable to the City of Talladega in the manner and with the conditions prescribed by law; and all further proceedings in this Court are hereby stayed until the determination of this cause by the Supreme Court of the United States.

Done this 28th day of March, 1910.

(Signed)

J. R. DOWDELL,
Chief Justice Supreme Court of Alabama.

Filed in office March 28th, 1910.

(Signed)

R. F. LIGON,
Clerk Supreme Court of Alabama.

52

In the Supreme Court of Alabama.

D. G. WILLIAMS, Appellant,

vs.

THE CITY OF TALLADEGA, Appellee.

Know all men by these presents: That we, D. G. Williams, as principal, and H. F. Crenshaw and A. M. Baldwin, as sureties, are held and firmly bound unto the above named The City of Talladega in the sum of One Thousand Dollars, to be paid to the said The City of Talladega, for the payment of which well and truly to be made we bind ourselves, and each of us, our heirs and assigns, firmly by these presents.

Sealed with our seals and dated the 28th day of March, 1910.

Whereas, the above named D. G. Williams has sued out a writ of error from the Supreme Court of Alabama to the Supreme Court of the United States to reverse a judgment rendered in the above entitled cause in the said Supreme Court of the State of Alabama:

Now, therefore, the condition of this obligation is such that if the above named D. G. Williams shall prosecute said writ of error to effect and answer all damages and costs, if he fails to make his said plea good, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

D. G. WILLIAMS. [L. s.]

H. F. CRENSHAW. [L. s.]

A. M. BALDWIN. [L. s.]

Approved:

J. R. DOWDELL,

Chief Justice of the Supreme Court of Alabama.

53

In the Supreme Court of Alabama.

D. G. WILLIAMS, Appellant,

vs.

THE CITY OF TALLADEGA, Appellee.

I, James R. Dowdell, Chief Justice of the Supreme Court of the State of Alabama, presiding therein at the present time and upon the argument, hearing and decision of the above named cause in said Court, do hereby certify that upon the hearing of the said cause the said D. G. Williams relied for his grounds of defense upon the following:

(1) That he was the agent of the Western Union Telegraph Company, which company had accepted and was doing business under the Act of Congress passed the 24th day of July, 1866, entitled, "An Act to aid in the construction of telegraph lines and to secure to the Government of the United States the use of the same for postal, military and other purposes."

(2) That the said ordinance imposed a license for revenue and not for police regulation or inspection, and was, therefore, not binding on appellant as an agent of the Western Union Telegraph Company, which company had accepted the Act of Congress of 1866, as aforesaid.

(3) That the said ordinance was invalid, in that it failed to exclude messages which were sent in the business of the United States Government.

(4) That the amount of the license tax imposed under the said ordinance was unreasonable, and the ordinance for that reason void.

That the same grounds of defense were set up and claimed by the said Williams in the trial of his case in the City Court of Talladega, in which court he was convicted of doing an intrastate telegraph

business in the said City without first obtaining a license
54 therefor, and that on appeal to the Supreme Court of Alabama the said judgment of conviction was affirmed, as is shown by the records of this Court.

I further certify that the Supreme Court of Alabama is the highest Court, in law or equity, in which a decision in this cause could be had in the State of Alabama.

Dated the 28th day of March, 1910.

(Signed)

J. R. DOWDELL,

Chief Justice of the Supreme Court of Alabama.

Filed in office March 28th, 1910.

(Signed)

R. F. LIGON,

Clerk Supreme Court of Alabama.

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In the Supreme Court of Alabama.

D. G. WILLIAMS, Appellant,

vs.

THE CITY OF TALLADEGA, Appellee.

I, Robert F. Ligon, Clerk of the Supreme Court of the State of Alabama, by virtue of the within writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 54, both inclusive, contain a true, full and complete transcript of the record and proceedings had in said Court, together with a true and correct copy of the opinion of said Court, in the case of D. G. Williams, Appellant vs. The City of Talladega, Appellee (7 Div. No. 290), and the original writ of error, the original citation and proof of service, the original assignments of error, and copies of the petition for writ of error, the order allowing the writ, the writ of error bond, and the certificate of Hon. J. R. Dowdell, Chief Justice of the Supreme Court of Alabama, as the same appears upon the files and records of this office.

In testimony whereof, I have hereunto affixed my official signature, as Clerk of the Supreme Court of Alabama, and have caused

the seal of said Supreme Court to be hereunto affixed at the Capitol, in the City of Montgomery, Alabama, on the 16th day of April, 1910, A. D.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,

Clerk of the Supreme Court of Alabama.

Endorsed on cover: File No. 22,137. Alabama Supreme Court. Term No. 266. D. G. Williams, plaintiff in error, vs. The City of Talladega. Filed May 5th, 1910. File No. 22,137.